

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CANDICE ROSSI CHEOLAS
and STEVE CHEOLAS

Plaintiffs,

CIVIL CASE NO. 06-11885

HONORABLE GERALD E. ROSEN
HONORABLE STEVEN D. PEPE

vs.

THE CITY OF HARPER WOODS, et al

Defendants.

**ORDER REGARDING PLAINTIFFS' MOTION TO COMPEL (Dkt. #21) AND
DEFENDANTS' MOTION FOR PROTECTIVE ORDER (Dkt. #27)**

The motions were referred to the undersigned for hearing and determination. A telephonic hearing was held on December 21, 2006. The parties' submitted statements of resolved and unresolved issues prior to the hearing indicating that many of the issues had been resolved. For the reasons stated on the record and below, IT IS ORDERED that:

A. Defendants' motion for a protective order precluding the depositions of the City of Harper Woods City Council members is GRANTED IN PART. Plaintiff shall not take the deposition of any non-party City Council member without making a sufficient showing under Fed. R. Civ. P. 26(b)(1) that such potential witness has information that is "reasonably calculated to lead to the discovery of admissible evidence." To determine this, Plaintiffs may submit a limited number of questions in the form of interrogatories to each non-party City Council member to be answered under oath subject to penalties of perjury, in a form authorized under 28 U.S.C. §1746. Council members whose answers to these interrogatories provide a predicate foundation under Rule 26(b)(1) can then be deposed by Plaintiffs' counsel. If the answers to these interrogatories do not provide a sufficient basis upon which the parties can stipulate regarding which council members will be

deposed, Plaintiffs' counsel may schedule an expedited follow-up hearing for the undersigned to make this determination. Defense counsel indicated at the hearing he would coordinate with the Defendant Harper Woods' City Attorney to facilitate the non-party City Council members responding to these questions.

B. Plaintiffs' motion to compel Fed. R. Civ. P. 26 disclosures, deposition dates for Defendants and discovery sanctions appears to be resolved and thus is DENIED AS MOOT subject to a possible follow up hearing noted below.

The parties agree that Defendants have provided the Rule 26 disclosures, though Plaintiffs argue they were made untimely and at great effort on Plaintiffs' part. The parties are continuing to work on scheduling the Defendants' depositions that were the subject of this motion. During the hearing Defendants' counsel indicated that within a week a qualified immunity motion would be filed regarding the prosecutor defendants – LaBarge and DeWaele.

Notwithstanding the delays in defense response, no sanctions will be awarded at this time for Rule 26(a)(1) or other discovery violations, in anticipation that defense counsel will undertake good faith efforts to complete the discovery in this case in a timely manner. Plaintiffs are instructed to contact my deputy clerk to arrange for a follow-up hearing if sufficient progress in scheduling the depositions has not been made by January 8, 2007.

Plaintiffs may also contact my deputy clerk to schedule a follow-up hearing if, upon reviewing Defendants LaBarge and/or Dewaele's qualified immunity motion, it appears the depositions of these Defendants will be needed in order to properly respond to that motion.

SO ORDERED.

Dated: December 22, 2006
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that on December 22, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: John J. Gillooly, Timothy S. Groustra, Robert M. John, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Albert B. Addis, Carl T. Rashid, 10 S. Main St., Ste. 307, Mt.Clements, MI 48043-7903

s/ James P. Peltier
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